

REFERENCE TITLE: **homeowner's associations; attorney fees**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2470

Introduced by
Representatives Smith: Gray C, Rosati

AN ACT

AMENDING SECTIONS 33-1256 AND 33-1807, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 33-1256, Arizona Revised Statutes, is amended to
3 read:

4 33-1256. Lien for assessments: priority: mechanics' and
5 materialmen's liens: applicability

6 A. The association has a lien on a unit for any assessment levied
7 against that unit from the time the assessment becomes due. The
8 association's lien for assessments, for charges for late payment of those
9 assessments, for reasonable collection fees and for reasonable attorney fees
10 and costs incurred with respect to those assessments may be foreclosed in the
11 same manner as a mortgage on real estate. Fees, charges, late charges,
12 monetary penalties and interest charged pursuant to section 33-1242,
13 paragraphs 10, 11 and 12, other than charges for late payment of assessments,
14 are not enforceable as assessments under this section. If an assessment is
15 payable in installments, the full amount of the assessment is a lien from the
16 time the first installment of the assessment becomes due. The association
17 has a lien for fees, charges, late charges, other than charges for late
18 payment of assessments, monetary penalties or interest charged pursuant to
19 section 33-1242, paragraphs 10, 11 and 12 after the entry of a judgment in a
20 civil suit for those fees, charges, late charges, monetary penalties or
21 interest from a court of competent jurisdiction and the recording of that
22 judgment in the office of the county recorder as otherwise provided by
23 law. The association's lien for monies other than for assessments, for
24 charges for late payment of those assessments, for reasonable collection fees
25 and for reasonable attorney fees and costs incurred with respect to those
26 assessments may not be foreclosed and is effective only on conveyance of any
27 interest in the real property.

28 B. A lien for assessments, for charges for late payment of those
29 assessments, for reasonable collection fees and for reasonable attorney fees
30 and costs incurred with respect to those assessments under this section is
31 prior to all other liens, interests and encumbrances on a unit except:

32 1. Liens and encumbrances recorded before the recordation of the
33 declaration.

34 2. A recorded first mortgage on the unit, a seller's interest in a
35 first contract for sale pursuant to chapter 6, article 3 of this title on the
36 unit recorded prior to the lien arising pursuant to subsection A of this
37 section or a recorded first deed of trust on the unit.

38 3. Liens for real estate taxes and other governmental assessments or
39 charges against the unit.

40 C. Subsection B of this section does not affect the priority of
41 mechanics' or materialmen's liens or the priority of liens for other
42 assessments made by the association. The lien under this section is not
43 subject to ~~the provisions of~~ chapter 8 of this title.

1 D. Unless the declaration otherwise provides, if two or more
2 associations have liens for assessments created at any time on the same real
3 estate, those liens have equal priority.

4 E. Recording of the declaration constitutes record notice and
5 perfection of the lien for assessments, for charges for late payment of those
6 assessments, for reasonable collection fees and for reasonable attorney fees
7 and costs incurred with respect to those assessments. Further recordation of
8 any claim of lien for assessments under this section is not required.

9 F. A lien for unpaid assessments is extinguished unless proceedings to
10 enforce the lien are instituted within three years after the full amount of
11 the assessments becomes due.

12 G. This section does not prohibit actions to recover sums for which
13 subsection A of this section creates a lien or does not prohibit an
14 association from taking a deed in lieu of foreclosure.

15 H. A judgment or decree in any action brought under this section shall
16 include costs and reasonable attorney fees for the prevailing party.

17 I. The association on written request shall furnish to a lienholder,
18 escrow agent, unit owner or person designated by a unit owner a statement
19 setting forth the amount of unpaid assessments against the unit. The
20 statement shall be furnished within fifteen days after receipt of the request
21 and the statement is binding on the association, the board of directors and
22 every unit owner if the statement is requested by an escrow agency that is
23 licensed pursuant to title 6, chapter 7. Failure to provide the statement to
24 the escrow agent within the time provided for in this subsection shall
25 extinguish any lien for any unpaid assessment then due.

26 J. The association shall record in the office of the county recorder
27 in the county in which the condominium is located a notice stating the name
28 of the association or designated agent or management company for the
29 association, the address for the association and the telephone number of the
30 association or its designated agent or management company. The notice shall
31 include the name of the condominium community, the date of the recording and
32 the recorded instrument number or book and page for the main document that
33 constitutes the declaration. If an association's address, designated agent
34 or management company changes, the association shall amend its notice or
35 record a new notice within ninety days after the change.

36 K. Notwithstanding any provision in the condominium documents or in
37 any contract between the association and a management company, unless the
38 member directs otherwise, all payments received on a member's account shall
39 be applied first to any unpaid assessments, for unpaid charges for late
40 payment of those assessments, for reasonable collection fees and for unpaid
41 attorney fees and costs incurred with respect to those assessments, in that
42 order, with any remaining amounts applied next to other unpaid fees, charges
43 and monetary penalties or interest and late charges on any of those amounts.

44 L. NOTWITHSTANDING ANY PROVISIONS IN THE CONDOMINIUM DOCUMENTS, IN ANY
45 ACTION TO COLLECT MONIES FROM A UNIT OWNER ALLEGED TO BE DUE TO THE

1 ASSOCIATION, THE ASSOCIATION'S RELATED CLAIM OF ATTORNEY FEES IS LIMITED TO
2 TEN PER CENT OF THE AMOUNT DUE OR DETERMINED TO BE OWED. THIS LIMITATION
3 APPLIES TO CLAIMS OF MONIES OWED THAT ARE RESOLVED WITH OR WITHOUT COURT
4 ACTION. FOR ANY ACTION IN WHICH THE UNIT OWNER IS THE PREVAILING PARTY, THE
5 COURT SHALL DETERMINE AND AWARD REASONABLE ATTORNEY FEES TO THE PREVAILING
6 PARTY.

7 ~~L~~. M. This section does not apply to timeshare plans or associations
8 that are subject to chapter 20 of this title.

9 Sec. 2. Section 33-1807, Arizona Revised Statutes, is amended to read:

10 33-1807. Lien for assessments; priority; mechanics' and
11 materialmen's liens

12 A. The association has a lien on a unit for any assessment levied
13 against that unit from the time the assessment becomes due. The
14 association's lien for assessments, for charges for late payment of those
15 assessments, for reasonable collection fees and for reasonable attorney fees
16 and costs incurred with respect to those assessments may be foreclosed in the
17 same manner as a mortgage on real estate. Fees, charges, late charges,
18 monetary penalties and interest charged pursuant to section 33-1803, other
19 than charges for late payment of assessments are not enforceable as
20 assessments under this section. If an assessment is payable in installments,
21 the full amount of the assessment is a lien from the time the first
22 installment of the assessment becomes due. The association has a lien for
23 fees, charges, late charges, other than charges for late payment of
24 assessments, monetary penalties or interest charged pursuant to section
25 33-1803 after the entry of a judgment in a civil suit for those fees,
26 charges, late charges, monetary penalties or interest from a court of
27 competent jurisdiction and the recording of that judgment in the office of
28 the county recorder as otherwise provided by law. The association's lien for
29 monies other than for assessments, for charges for late payment of those
30 assessments, for reasonable collection fees and for reasonable attorney fees
31 and costs incurred with respect to those assessments may not be foreclosed
32 and is effective only on conveyance of any interest in the real property.

33 B. A lien for assessments, for charges for late payment of those
34 assessments, for reasonable collection fees and for reasonable attorney fees
35 and costs incurred with respect to those assessments under this section is
36 prior to all other liens, interests and encumbrances on a unit except:

37 1. Liens and encumbrances recorded before the recordation of the
38 declaration.

39 2. A recorded first mortgage on the unit, a seller's interest in a
40 first contract for sale pursuant to chapter 6, article 3 of this title on the
41 unit recorded prior to the lien arising pursuant to subsection A of this
42 section or a recorded first deed of trust on the unit.

43 3. Liens for real estate taxes and other governmental assessments or
44 charges against the unit.

1 C. Subsection B of this section does not affect the priority of
2 mechanics' or materialmen's liens or the priority of liens for other
3 assessments made by the association. The lien under this section is not
4 subject to chapter 8 of this title.

5 D. Unless the declaration otherwise provides, if two or more
6 associations have liens for assessments created at any time on the same real
7 estate those liens have equal priority.

8 E. Recording of the declaration constitutes record notice and
9 perfection of the lien for assessments, for charges for late payment of
10 assessments, for reasonable collection fees and for reasonable attorney fees
11 and costs incurred with respect to those assessments. Further recordation of
12 any claim of lien for assessments under this section is not required.

13 F. A lien for an unpaid assessment is extinguished unless proceedings
14 to enforce the lien are instituted within three years after the full amount
15 of the assessment becomes due.

16 G. This section does not prohibit:

17 1. Actions to recover amounts for which subsection A of this section
18 creates a lien.

19 2. An association from taking a deed in lieu of foreclosure.

20 H. A judgment or decree in any action brought under this section shall
21 include costs and reasonable attorney fees for the prevailing party.

22 I. On written request, the association shall furnish to a lienholder,
23 escrow agent, unit owner or person designated by a unit owner a statement
24 setting forth the amount of any unpaid assessment against the unit. The
25 association shall furnish the statement within fifteen days after receipt of
26 the request, and the statement is binding on the association, the board of
27 directors and every unit owner if the statement is requested by an escrow
28 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
29 the statement to the escrow agent within the time provided for in this
30 subsection shall extinguish any lien for any unpaid assessment then due.

31 J. The association shall record in the office of the county recorder
32 in the county in which the planned community is located a notice stating the
33 name of the association or designated agent or management company for the
34 association, the address for the association and the telephone number of the
35 association or its designated agent or management company. The notice shall
36 include the name of the planned community, the date of the recording and the
37 recorded instrument number or book and page for the main document that
38 constitutes the declaration. If an association's address, designated agent
39 or management company changes, the association shall amend its notice or
40 record a new notice within ninety days after the change.

41 K. Notwithstanding any provision in the community documents or in any
42 contract between the association and a management company, unless the member
43 directs otherwise, all payments received on a member's account shall be
44 applied first to any unpaid assessments, for unpaid charges for late payment
45 of those assessments, for reasonable collection fees and for unpaid attorney

1 fees and costs incurred with respect to those assessments, in that order,
2 with any remaining amounts applied next to other unpaid fees, charges and
3 monetary penalties or interest and late charges on any of those amounts.

4 L. NOTWITHSTANDING ANY PROVISIONS IN THE COMMUNITY DOCUMENTS, IN ANY
5 ACTION TO COLLECT MONIES FROM A MEMBER ALLEGED TO BE DUE TO THE ASSOCIATION,
6 THE ASSOCIATION'S RELATED CLAIM OF ATTORNEY FEES IS LIMITED TO TEN PER CENT
7 OF THE AMOUNT DUE OR DETERMINED TO BE OWED. THIS LIMITATION APPLIES TO
8 CLAIMS OF MONIES OWED THAT ARE RESOLVED WITH OR WITHOUT COURT ACTION. FOR
9 ANY ACTION IN WHICH THE MEMBER IS THE PREVAILING PARTY, THE COURT SHALL
10 DETERMINE AND AWARD REASONABLE ATTORNEY FEES TO THE PREVAILING PARTY.